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July 9

Honorable Harry E. Jackson
Deputy Secretary of State
Concord, New Hampshire

Dear Mr. Jackson:

On behalf of the Acting Governor and the Council, you have inquired whether the Salary Adjustment Fund lapses at the end of each fiscal year. It is my opinion that it does.

The Salary Adjustment Fund is defined in Laws of 1951, c. 255, s. 3 as follows:

"Salary Adjustment Fund. Whereas the appropriation for personal services in state departments and institutions for the year ending June 30, 1952, includes an annual increment for each position under the classification law, and whereas, upon occasion, due to vacancies and personnel turnover, salaries and wages and increment increases as provided by the appropriations as well as longevity are not needed for said positions, whenever a salary or longevity pay increment is not granted due to personnel turnover or due to the replacement of an employee with another employee at a lesser salary, or for other reasons, the department of administration and control shall immediately transfer from the departmental appropriations such portions of said salaries as will be unnecessary or not required to a special account to be known as the salary adjustment fund. This fund shall be available only for transfer to departments or institutions for emergency personnel needs or the employment of temporary help, subject to the approval of the governor and council."

This section is a part of the general appropriations act for the fiscal year 1952, and is repeated as a part of the general appropriations act for the following year. Laws of 1951, c. 256, s. 2.

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The general statute pertaining to the lapse of appropriations is Revised Laws, chapter 22, section 29:

"Lapsed Appropriations. Except as otherwise specially provided, all unexpended portions of special appropriations shall lapse when the object for which the appropriation was made has been accomplished, and, in any event, at the expiration of three years from the date when the act creating the appropriation first took effect, unless there are obligations incurred by contract thereunder, made within said period, in which case there shall be no lapse until the satisfaction or fulfillment of such contractual obligations. Except as otherwise specially provided, all unexpended portions of general appropriations which have not been expended during the fiscal year for which they were appropriated shall lapse at the end of thirty days after the expiration of the year."

In my opinion, the Salary Adjustment Fund is not a "special appropriation" which could be spent under the terms of the above section at any time within three years after the date upon which it was established. Perhaps the best way to show the distinction is to cite a few instances where the Legislature has made such "special appropriations": For example, the fish and game fund established by R. L., c. 240, ss. 36, 39, Laws of 1951, c. 255, note at page 632; the forest improvement and recreation fund established by R. L., c. 234, s. 14, as amended by Laws of 1945, c. 184, s. 10, Laws of 1949, c. 295, s. 3, Laws of 1951, c. 240, s. 14; also, the public assistance fund established under R. L., c. 126, s. 23, as amended by Laws of 1951, c. 90, s. 8. And, see generally, capital budget acts, which make appropriations for special objects and hence do not lapse until those purposes are accomplished or until three years from their effective dates unless "otherwise specially provided." The above-cited funds are a part of the general laws of the state and in each instance appropriate language is included to provide that unexpended balances in the accounts of such funds shall not lapse but shall be available for expenditure by a particular agency, with the approval of the Governor and Council. Such an "anti-lapse" provision is not found in the language of the Salary Adjustment Fund.

It is obvious that the Legislature, in enacting this section of the law, intended two things: First, to prevent excess accruals originally intended for salaries and wages to be used for any other purpose; and second, to permit the transfer of such excess funds between departments for (a) emergency personnel needs, and (b) for the employment of temporary employees. It is only to this extent that the Legislature intended to modify the general rules of law which would otherwise be applicable to the expenditure of these funds.

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If, in addition to achieving these two objectives, the Legislature had also intended that the general laws affecting the lapse of items appropriated under the general appropriations act were not to apply, it would undoubtedly have made further provision accordingly. In instances where doubt may exist as to whether or not a particular appropriation should lapse, the Legislature has demonstrated its ability to deal with the problem by so stating, clearly and unequivocally. Indeed, many such instances occur, both in the capital appropriations act and in the budget act for the year 1951. See, for example, with reference to specific provision for a fund to lapse, Laws of 1951, c. 255, page 683 (Regional Associations) and Laws of 1951, c. 254, s. 6 (appropriations for certain capital improvements). As to instances where certain appropriations in the general appropriations act are not to lapse, see Laws of 1951, c. 255, s. 1 at pages 623 (expenses of Legislature); 635 (Judicial Council); 632 (Fish and Game); and 629 (Public Works and Highways).

In the absence of a special provision to the contrary, it is my conclusion that the Salary Adjustment Fund lapses at the end of each fiscal year.

Very truly yours,

Gordon H. Tiffany
Attorney General

GHT/a